

In re Application of Kimbrell et al.  
Application No. 10/699,899

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**REMARKS**

*The Pending Claims*

Claims 7 and 42 have been amended to correct typographical errors appearing therein. Claims 1-7, 9-39, and 41-51 currently are pending in the application.

*Summary of the Office Action*

The Office Action rejects claims 1-7, 9-11, 13-20, 22-31, 33-39, and 41-51 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,908,663 (Wang et al.) (hereinafter "the Wang '663 patent") in view of one or more of the following: U.S. Patent Application Publication No. 2004/0137814 (Kimbrell, Jr. et al.) (hereinafter "the Kimbrell '814 publication"), U.S. Patent Application Publication No. 2004/0137818 (Kimbrell, Jr. et al.) (hereinafter "the Kimbrell '818 publication"), and U.S. Patent Application Publication No. 2004/0138083 (Kimbrell, Jr. et al.) (hereinafter "the Kimbrell '083 publication").

The Office Action rejects claims 12 as allegedly unpatentable over the Wang '663 patent in view of one or more of the Kimbrell '814 publication, the Kimbrell '818 publication, and the Kimbrell '083 publication in further view of U.S. Patent No. 5,573,553 (McBride et al.) (hereinafter "the McBride '553 patent").

The Office Action rejects claim 21 as allegedly unpatentable over the Wang '663 patent in view of one or more of the Kimbrell '814 publication, the Kimbrell '818 publication, and the Kimbrell '083 publication in further view of U.S. Patent No. 5,540,968 (Higgins) (hereinafter "the Higgins '968 patent").

The Office Action rejects claims 32 as allegedly unpatentable over the Wang '663 patent in view of one or more of the Kimbrell '814 publication, the Kimbrell '818 publication, and the Kimbrell '083 publication.

*Discussion of the Claim Amendments*

Claims 7 and 42 have been amended to correct typographical errors appearing in the claims. In view of these amendments, Applicants respectfully submit that the objection to claim 7 has been rendered moot and should be withdrawn.

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*Discussion of the Section 103 Rejections*

As noted above, all of the claims currently pending in the application have been rejected as allegedly obvious over the Wang '663 patent in combination with one or more of the Kimbrell '814 publication, the Kimbrell '818 publication, and the Kimbrell '083 publication. However, as discussed below, Applicants respectfully submit that the Kimbrell '814, the Kimbrell '818, and the Kimbrell '083 publications cannot properly be relied upon to reject the claims of the pending application under 35 U.S.C. § 103(a).

The Kimbrell '814, the Kimbrell '818, and the Kimbrell '083 publications were all published on July 15, 2004, from applications which were filed on January 10, 2003. The present application was filed on November 3, 2003. Accordingly, the Kimbrell '814, the Kimbrell '818, and the Kimbrell '083 publications only qualify as prior art to the present application under 35 U.S.C. § 102(e). Furthermore, the Kimbrell '814 publication, the Kimbrell '818 publication, the Kimbrell '083 publication and the subject matter claimed in the present application were, at the time the present invention was made, owned by the same entity or subject to an obligation of assignment to the same entity, namely Milliken & Company. Therefore, the Kimbrell '814, the Kimbrell '818, and the Kimbrell '083 publications cannot be relied upon to reject the invention defined by the pending claims under 35 U.S.C. 103(a) (see, 35 U.S.C. 103(c) and M.P.E.P. §§ 706.02(l)(1) and (2)).

As evidenced by the Office's Action reliance upon one or more of the Kimbrell '814, the Kimbrell '818, and the Kimbrell '083 publications, the remaining references (i.e., the Wang '663 patent, the McBride '553 patent, and the Higgins '968 patent) appear to fail to teach or suggest all of the elements of the pending claims. Therefore, the subject matter defined by the pending claims cannot properly be considered *prima facie* obvious over the Wang '663 patent, the McBride '553 patent, or the Higgins '968 patent, whether considered alone or in combination.

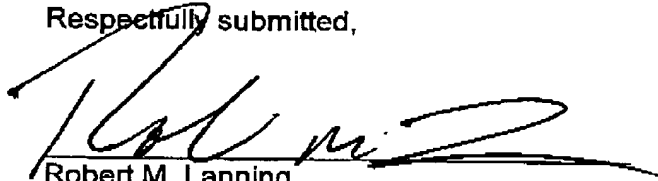
In view of the foregoing, Applicants submit that the invention defined by the pending claims cannot properly be considered *prima facie* obvious over the Wang '663 patent in view of one or more of the Kimbrell '814 publication, the Kimbrell '818 publication, and the Kimbrell '083 publication. The Section 103 rejections of the pending claims, therefore, should be withdrawn.

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*Conclusion*

In view of the foregoing, the application is considered in proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone interview would expedite prosecution of the instant application, the Examiner is invited to call the undersigned.

Respectfully submitted,



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Date: July 31, 2006